IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.2247 OF 2001

Bharatiya Kamgar Karmachari Mahasangh. ...Petitioner.

Versus

M/s.Acqua Bislery (India) Ltd. & Ors. ...Respondents.

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Mr. S.K. Talsania ith Ms.Shobhana Gopal for the Petitioner.

Mr. C. U. Singh with Mr. Sanjay Udeshi for the Respondents.

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CORAM : DR. D.Y. CHANDRACHUD, J.

February 24, 2005.

P.C.:

The Industrial Court by its order dated 12th July 2001 dismissed complaints of unfair labour practice under Item 6 of Schedule II and Items 9 and 10 of schedule 4 of the Maharashtra

Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971.

2. The dispute before the Industrial Court arose in relation to three Companies: (i) Parle (Exports) Ltd; (ii) Parle Bisleri Ltd.; and (iii) Acqua Bisleri (India) Ltd. Initially, three complaints of unfair labour practice were instituted before the Industrial Court, Complaint (ULP) Nos.377, 378 and 379 of 2000. In these three complaints, the relief which had been sought was inter alia an injunction restraining the management from terminating the services of the workmen who formed the subject matter of those complaints without due process of law. In Complaint (ULP) 377 of 2000, 12 permanent and 56 casual workers formed the subject matter of the complaint; in Complaint (ULP) 378 of 2000, 8 permanent and 89 casual workers; and in Complaint (ULP) 379 of 2000, 12 permanent and 10 casual workers were the subject matter of the proceedings. On 24th April 2000, an order of status quo was passed by the Industrial Court and on 5th May 2000, the Industrial Court restrained the management from

terminating the services of certain employees listed at Exh.U-4 without following due process of law. On 5th May 2000, an interim order was passed in a complaint filed by the management (Complaint (ULP) 422/2000) on the apprehension that had been expressed by the management that the Union was disrupting the activities of work by holding demonstrations.

3. The earlier three complaints, Complaint (ULP) Nos.377, 378 and 379 of 2000 do not form the subject matter of these proceedings. These proceeding arise out of three subsequent complaints, Complaint (ULP) 649, 650 and 651 of 2000 in which the relief that was sought was inter alia that the management be directed to allow the workmen mentioned in Annexure-A to the three complaints to resume duty and that the management be restrained from recruiting new persons in their place. Significantly, it must be noted that whereas in Complaint (ULP) 377 of 2000 which related to Parle Exports Ltd., 12 permanent and 56 casual workers had been listed in the annexure to the complaint, in the corresponding new

complaint, Complaint (ULP) 649 of 2000, the number of workmen in annexure-A stood increased to 321. It is an admitted position that the new complaint included, besides permanent and casual workers, contract workmen in respect of whom the complaint could not have been maintained in view of the the settled position in law. Counsel appearing on behalf of the Petitioner-Union has fairly stated that the complaint could not have been maintained in so far as contract workmen were concerned in view of the decision of the Supreme Court in **Cipla Ltd.vs. Maharashtra General Kamgar Union,** (2001) 3 SCC 101.

4. The question which arose before the Industrial Court was whether the workmen had proceeded on an illegal strike, as the management contended, or whether the management had declared an illegal lock out as the Union contended. The Industrial Court on a review of the evidence has held that there was no illegal lock out on the part of the management and that the evidence on the record would show that it was the workmen who had declined to render work

subject to the filing of an undertaking that was demanded by the management that those who reported for work would render normal work in a disciplined manner.

5. In or about the first week of June 2000, it would appear that an effort had been made by the Petitioner before the Court to establish its presence in the three plants of Acqua Bisleri (India) Ltd., Parle Exports Ltd., and Parle Bisleri Ltd. According to the management, there were serious acts of indiscipline and its Production Manager had been stabbed at his residence in an incident relating to Union incited violence. Commencing from 10th June 2000, according to the management, the workmen struck work and declined to perform their usual duties. The management on its part put up notices dated 10th June 2000, 12th June 2000, 13th June 2000, 15th June 2000, 23rd June 2000 and 26th June 2000 calling upon the striking workers to resume work subject to the filing of an undertaking that upon resumption of work, the workers would conduct themselves in a disciplined manner and would render normal production. The

notices were responded to by the Union and from the compilation of documents that has been filed before the Court by the Union, it would appear that the Union disputed the contention of the management that the workmen had proceeded on an illegal strike. The contention of the Union appears to have been that it was the management which had prevented the workmen from rendering work. However, from a letter dated 23rd June 2000 of the Union which is placed on the record in the compilation of documents, it is clear that the Union was of the view that the workmen should be allowed to report for duties without the management insisting upon any condition such as the filing of an undertaking to render normal production. Subsequently, on 28th June 2000, the Union stated that the workmen were ready and willing to furnish a declaration in the format that was suggested. What took place thereafter is a matter of evidence to which it is now necessary to turn. On behalf of the complainant Union, evidence was adduced by Shri Sunil Balkrishna Patil. The witness in the course of his deposition admitted firstly that the workmen had refused to sign the undertaking which the Company was insisting upon. According to the

witness, the reason for doing this was that the undertaking required the workmen to desert the union which is the Petitioner before the Court. The Industrial Court in the course of its order, however, noted that the undertaking which had been required by the management did not in fact, contain any requirement that the workmen should desist from the membership of the Petitioner Union. Indeed, a perusal of the undertaking that has been filed on the record would show that there was no such insistence by the management. Secondly, from the cross-examination of the witness, it is clear that the workman did in fact, furnish an undertaking on 17th August 2000 after which he was allowed to report for duty. Thirdly, the workman then admitted that some casual employees had also reported for duty on furnishing a written undertaking to the management. Fourth, the witness admitted that on 15th June 2000, no undertaking was given by the workman but that an undertaking was furnished only on 17th August 2000. Fifth, the witness admitted that whoever had given an undertaking was allowed to resume work by the management.

6. Apart from these admissions which emerge from the cross-examination of the witness for the Union, from the record it appears that on 11th July 2000, the Industrial Court appointed an Investigating Officer to visit the premises of the management and to submit a report. Before the Investigating Officer, the management stated that it was prepared to take back all permanent employees except those who have been suspended and such casual labour as was in accordance with the requirement of the Company. The Union's representative, however, informed the Investigating Officer that the permanent workmen would not resume duties unless all remaining casual workmen were allowed to resume duties. Both on the basis of the evidence of the Union' switness as well as from the report of the Investigating Officer, the Industrial Court has come to the conclusion that this was not a case where the management had prevented the workmen from reporting from duty but a case where the workmen had stated that they would refuse to render work unless all the casual workers were given work. Similarly, it came in the course of the admission of the witness of the Union that the workmen

declined to give an undertaking to give normal production and that after undertakings were furnished, the Company had provided work. In the background of the material which has come on the record, it cannot be held that the management was not justified in asking for an undertaking for normal work. Counsel appearing on behalf of the management sought to rely on a compilation of documents consisting of material before the Industrial Court including newspaper articles which had appeared in the press to show that the workmen in the undertakings of the Management here had proceeded on the strike. I have not taken into consideration these newspaper articles considering the limitations on their evidentiary value. The finding which has been arrived at by the Industrial Court is based on evidence and cannot be regarded as perverse or as contrary to the weight of the evidence. Even if it were a possible finding, the Court would not interfere in its supervisory jurisdiction.

7. One of the considerations which has been weighed with the Industrial Court in dismissing the complaint is that the complaint under

Item 6 of Schedule II of the Act would not be maintainable unless an independent declaration was obtained in regard to the illegality of the lock out. This finding of the Industrial Court is not consistent with the law laid down by a Division Bench of this Court in **Maharashtra General Kamgar Union vs. Balkrishna Pen Pvt.Ltd.** 1988 Mh. L.J. 832 and reiterated by a Division Bench in **Modistone Ltd. vs. Modistone Employees' Union,** 2001 I CLR 1009. In view of the decision of the Division Bench, Counsel appearing on behalf of the Management conceded that this part of the order of the Industrial Court is erroneous. The matter proceeded on the aforesaid basis.

8. For the reasons already indicated hereinabove, I have come to the conclusion that the finding of fact which has been arrived at by the Industrial Court does not warrant interference under Article 226. The Petition is accordingly rejected.

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